Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

CONSTRUCTIVIST FOUNDATION, INC.,
F/K/A/ LEE FOUNDATION, INC.,

Petitioner,

v.

DEKALB COUNTY
BOARD OF TAX ASSESSORS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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52 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Order of the DeKalb County Superior Court denying an exemption from ad valorem taxation for the property owned by the Constructivist Foundation (hereinafter the Foundation), as a place of religious worship in tax year 1994, was a denial of the Foundation's Constitutional rights under the 14th Amendment, and whether the the State of Georgia Court of Appeals erred in affirming the Superior Court.

II. Whether the Order of the DeKalb County Superior Court denying an exemption from ad valorem taxation for the property owned by the Foundation, as an institution of purely public charity in tax years 1992-1994, was a denial of the Foundation's Constitutional rights under the 14th Amendment, and whether the State of Georgia Court of Appeals erred in affirming the Superior Court.

III. Whether the Court of Appeals of Georgia violated the Foundation's 14th Amendment rights to equal protection under the laws and due process of the law by rendering an unreported summary disposition that under Rule 36 was not to have precedential effect.

RULE 29.6 STATEMENT

Pursuant to S.Ct. R. 29.6, Petitioner Constructivist Foundation, Inc. states that it is a Georgia, nonprofit foundation which has no parents, affiliates or subsidiaries. The Foundation has its local office in Potomac, Maryland.

LIST OF PARTIES

The inclusion of Honorable Tom Scott and DeKalb County Board of Commissioners as defendants on the caption on some of the Orders in the Appendix does not represent additional parties to this petition for writ of certiorari, because this matter was bifurcated.

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Decision of DeKalb County Board of Equalization dated 28 September 1994 regarding denial of exemption. for tax year 1993;

Decision of DeKalb County Board of Equalization dated 23 March 1995 regarding denial of exemption for tax year 1994.

STATEMENT OF JURISDICTION

i The judgment to be reviewed is the Order of the Superior Court of DeKalb County, Georgia that was entered on 2 April 1996.

ii. On 4 March 1997 the Court of Appeals of Georgia affirmed the ruling of Superior Court of DeKalb County. This Order was entered 4 March 1997.

iii. The Georgia Court of Appeals denied the Foundation's Motion to Reconsider by an Order entered on 20 March 1997.

iv. On 2 May 1997 The Constructivist Foundation filed for Chapter 11 Bankruptcy in the U.S. Bankruptcy Court for the District of Maryland, Southern Division

v. On 6 May 1997 the Constructivist Foundation sent a Notice of Filing Case in Bankruptcy Court to the Supreme Court of Georgia, where the Foundation had at that time filed a Petition for Certiorari pending.

vi. By Order entered 7 August 1998, the Bankruptcy Court dismissed the Foundation's Chapter 11 case upon motion of U.S. Trustee.

vii. On 23 October 1998 .the Supreme Court of Georgia entered its order denying the Foundation's Petition for Certiorari.

viii. This Court's jurisdiction is invoked under 28 U.S.C. 1257(a) (1988)

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS

THE DUE PROCESS CLAUSE AND THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT OF THE U.S. CONSTITUTION SECTION I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 1257(a) (1988)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or
the treaties or statutes of, or any commission held or authority exercised under, the United States.

U.S. SUPREME COURT RULE 29.6

Every document, except a joint appendix or amicus curiae brief, filed by or on behalf of one or more corporations shall list all parent companies and nonwholly owned subsidiaries of each of the corporate filers. If there is no parent or subsidiary company to be listed, a notation to this effect shall be included in the document. If a list has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier list appeared in an application for an extension of time or for a stay), and only amendments to the list to make it current need be included in the document being filed.

RULE 36 OF THE COURT OF APPEALS OF THE STATE OF GEORGIA

"AFFIRMANCE WITHOUT OPINION, WHEN RENDERED"

Cases in which:

(1) The evidence supports the judgment;

(2) No reversible error of law appears and an opinion would have no precedential value;

(3) The judgment of the court below adequately explains the decision; and/or

(4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief

may be affirmed without opinion. Rule 36 cases have no precedential value.

RULE 34 OF THE COURT OF APPEALS OF THE STATE OF GEORGIA

"REPORTING OF OPINIONS"

Opinions are reported except as otherwise designated by the Court.

The official reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors and participants in the opinions.

O,C.G.A. 48-5-41(a)(2): O,C.G.A. 48-5-41(a) The following property shall be exempt from ad valorem taxes in this state: (2) All places of religious worship or burial.

O.C.G.A. 48-5-41(a)(3): O.C.G.A. 48-5-41(a) The following property shall be exempt from all ad valorem taxes in this state: (3) All property owned by religious groups and used only for single-family residences when no income is derived from the property;

O.C.G.A. 48-5-41(a)(4) The following property shall be exempt from all ad valorem taxes in this state: (4) All institutions of purely public charity

O.C.G.A. 48-5-41(d). This code section, excluding paragraph (1) of subsection (a) of this Code section, shall not apply to real estate or buildings which are rented, leased, or otherwise used for the primary purpose of securing an income thereon and shall not apply to real estate or buildings which are not used for the operation of religious, educational, and charitable institutions. Donations of property to be exempted shall not be predicated upon an agreement, contract, or other instrument that the donor or donors shall receive or retain any part of the net or gross income of the property.

OP.Att'y.Gen. No. U75-15, p. 319 (1975).
Property utilized as a cemetery or place of burial is exempt from taxation without regard for the fact that property is owned by either a public or private corporation or by individuals, collectively or severally." OP.Att'y.Gen. No. U75-15, p. 319 (1975). .

STATEMENT OF THE CASE

The Constructivist Foundation (hereinafter the Foundation), was incorporated in the State of Georgia in 1963. It is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. Helping other charitable entities, including churches, is among the Foundation's corporate/charitable purposes. (Transcript of Trial on 14 March 1995 before DeKalb County Superior Court, hereinafter Transcript, Page 86, Lines 9-14).The Foundation owns certain property in DeKalb County, Georgia that consists of 10+ acres of land with a 22,000 square foot school/church building. The DeKalb County taxing authorities granted this property an exemption from ad valorem taxation from 1968 to 1978 because it was the site of a Montessori school at that time. The Foundation applied again to the DeKalb County taxing authorities for an exemption from ad valorem taxation for the subject property for tax years 1992, 1993, and 1994, as an institution of purely public charity and, in the alternative for tax year 1994, as a place of religious worship. All of the Foundation's requests for exemption were denied by the DeKalb County Board of Tax Assessors, and the denials were affirmed by the DeKalb County Board of Equalization. The Foundation then appealed to the DeKalb County Superior Court (trial de novo), and the matter proceeded before the Superior Court on 14 March 1995. The Superior Court entered its Order on 2 April 1996, determining that the Foundation's property was not entitled to an exemption from ad valorem taxation for tax years 1992-1994 as an institution of purely public charity, and that the

Foundation's property was not entitled to an exemption from ad valorem taxation as a place of religious worship for tax year 1994. The Court of Appeals of Georgia, without reporting an opinion, affirmed the Superior Court, and the Supreme Court of Georgia denied the Foundation's request for certiorari on the same issue.

In the trial before the Superior Court of DeKalb County, the Foundation, which was represented by counsel at the time, raised Constitutional issues as follows:

In closing, Counsel stated that to the Court that DeKalb County was indirectly taxing the churches, and that could not stand up under any Constitutional muster.(Transcript Page 144, Lines 7-9 .) The Order entered by the DeKalb County Superior Court on 2 April addressed neither United States nor State of Georgia Constitutional issues.

In the Amended Brief that the petitioner filed in the Court of Appeals of the State of Georgia, the petitioner, who was proceeding pro se at the time, raised U.S. Constitutional issues as follows:

In Enumeration of Error D Petitioner stated, "The Superior Court of DeKalb County erred in its determination that the Foundation's property did not qualify for exemption from ad valorem taxation in 1992, 1993 and 1994 as a place of religious worship or as an institution of purely public charity, thereby denying the Foundation its Due Process rights and equal protection of the law under the Fourteenth Amendment of the Constitution of the United States."

In the Reply Brief that the petitioner filed in the Court of Appeals of the State of Georgia, the petitioner, who was pro se at the time, raised U.S. Constitutional issues in Section F., entitled Constitutional Issues, as follows:

1. On page 9 Petitioner stated that the Foundation was being treated differently from other nonprofit entities in Georgia that own churches and receive substantial income from allowing other organizations to be the primary users for religious purposes. Petitioner referred specifically to Emory University's ownership of the site used by Glen Memorial Church, for which the Methodist Church pays a substantial fee, as the primary user..

2. Beginning on page 9 and continuing on page 10, Petitioner asserted that the trial in Superior Court was conducted in a manner that was very prejudicial to the Foundation, because important evidence was excluded, certain findings of fact were contrary to the evidence that was allowed, and certain conclusions of law were erroneous.

In its Petition for Certiorari to the Georgia Supreme Court the petitioner, who was pro se at the time, raised U.S. Constitutional issues as follows:

1. On page 6 Petitioner stated that the "Constitutional protection of freedom of worship" was the basis for the public policy not to tax church buildings. Also on page 6, the petitioner further commented, "This unprecedental decision will have serious practical effect and value in the enforcement in DeKalb County of the law in Georgia as regards the uniform application of the laws effecting (sic) the freedom to practice religion, which has serious constitutional questions, both in Georgia and the United States."

2. On page 10, Section C, Petitioner stated that the Superior Court violated the Foundation's Due Process rights in not allowing crucial evidence to be entered and that the Court of Appeals erred in affirming that determination. In that section the Foundation explained that its right to due process of the law was violated when the Superior Court drew the conclusion that the Foundation's property was not entitled to an exemption because the Foundation had obtained small monetary contributions for maintenance of the site from the churches that use the site, when the operative statute provides that no exemption shall be granted for property, the *primary purpose* for which is to earn a profit.

3. On page 11, Section D, Petitioner stated that the unreported judgment of the Court of Appeals violated the Foundation's Due Process rights and the Foundation's right to Equal Protection of the laws.

REASONS FOR GRANTING THE PETITION

I. The denial by the DeKalb County Superior Court of an exemption from ad valorem taxation for the Foundation's property, as a place of religious worship in 1994, was a denial of the Foundation's Constitutional rights under the 14th Amendment. The State of Georgia Court of Appeals erred in affirming the DeKalb County Superior Court.

The Foundation applied for an exemption from ad valorem taxation for the subject property alternatively in 1994 as a place of religious worship, because that was the undisputed primary use of the property at the time. Since 1985, the Foundation had allowed a church to operate as a place of religious worship on the site. In 1989, the Foundation allowed The Reverend Christopher Hunt, its agent for assisting the Foundation in fulfilling its charitable purposes, to operate his church on the site. Therefore, through its agent Reverend Hunt, the Foundation has been administering religious worship at the site since 1989. Reverend Hunt took care of much of the maintenance on the site himself during most of this time. In 1993 the Foundation donated full and complete control and use of the site to Reverend Hunt's church . In other words, in addition to operating a place of religious worship as the Foundation's agent, Reverend Hunt was also operating a place of religious worship on his own behalf. At this point, Reverend Hunt and all or some of his entities, Ashdun Hall Christian Fellowship, First Love

Christian Church, and First Love Foursquare Church, were completely responsible for the cost of the maintenance, the utilities, and the building operations on the site (not the mortgage or the taxes). After Reverend Hunt gained complete control of the premises, in 1993, one of Reverend Hunt's churches, First Love, allowed other churches to use the property as a place of religious worship, and in exchange those other churches contributed to Reverend Hunt's church's and entities' costs for maintenance, utilities, and building operations at the site. The other churches' contributions were never enough to cover all of the costs of maintenance, utilities, and the building operations at the site, and Reverend Hunt and his churches always had to pay the difference. No income was ever realized by the Foundation from these contributions to maintenance, utilities, and building operations. Specifically, in regard to the issue in the instant appeal, the Foundation received no income from the use of the subject property in tax year 1994. In 1994 Reverend Hunt received the contributions toward maintenance, utilities and building operations from the other churches using the site, and Reverend Hunt applied those contributions toward the maintenance, utilities, and building operations of the site, keeping a small stipend for himself.

The Foundation applied to the DeKalb County taxing authorities for an exemption from ad valorem taxation as a place of religious worship for tax year 1994, in accordance with O.C.G.A. 48-5-41(a)(2), which provides for an exemption from ad valorem taxation for "all places of religious worship.". The DeKalb County Board of Tax Assessors denied the Foundation's application. The DeKalb County Board of Equalization affirmed that denial. The DeKalb County taxing authorities determined, for one, that the Foundation was merely the owner, but not the user, of the subject property as a place of religious worship, and therefore, under the DeKalb County taxing authority's understanding of O.C.G.A. 48-5-41(a)(2), the

Foundation was not entitled to an exemption as a place of religious worship. The DeKalb County taxing authorities also objected to what they perceived as the Foundation's renting of its property to others and earning an income therefore. The DeKalb County Superior Court held that the Foundation was not entitled to an exemption in 1994 as a place of religious worship in its Order that was entered on 2 April 1996. The Georgia Court of Appeals affirmed the DeKalb County Superior Court on the issue, without issuing an opinion, and the Georgia Supreme Court denied certiorari on the issue.

The Foundation contends that the DeKalb County Superior Court based its opinion on numerous errors of fact, and the Foundation realizes that those issues can not be entertained in this forum, so the Foundation will not raise them at this time, although the Foundation may refer briefly to those errors. For example, the Superior Court of DeKalb County stated in its Opinion that it considered Reverend Hunt to have been the vice president of the Foundation in 1992 and 1993, which was false.(Testimony of Christopher Hunt, Transcript, Page 66, Lines 17-25) In 1992, Reverend Hunt signed an agreement, providing for the use of the site by another church. Reverend Hunt signed that agreement referring to himself in the signature as the vice president of the Foundation. This was erroneous. This was not an accurate representation by Reverend Hunt. Reverend Hunt was not an officer of the Foundation in any of the tax years subject of this appeal, 1992, 1993, and 1994. 1994 is the tax year subject to the application for exemption as a place of religious worship in this appeal. The subject agreement was between Reverend Hunt and another church using the site. The Foundation was not a party to any such agreement during any of the tax years subject of this suit. The Superior Court admitted in its Order entered on 2 April 1996 that in 1994 the other church that was party to the agreement, made its payments for the use

of the premises to Reverend Hunt's church, and that payments were used by Reverend Hunt and his church just for maintenance of the site, the utilities at the site, the building operations at the site, and a a small living stipend for Reverend Hunt.

A. THE DENIAL OF THE FOUNDATION'S APPLICATION FOR EXEMPTION FROM AD VALOREM TAXATION FOR ITS PROPERTY AS A PLACE OF RELIGIOUS WORSHIP IN 1994 VIOLATED THE FOUNDATION'S RIGHT TO EQUAL PROTECTION OF THE LAWS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION.

The DeKalb County Superior Court stated in its Order, "Plaintiff admits that it, as owner of the property, does not engage in religious worship." (Order entered on 2 April 1996 by the DeKalb County Superior Court, Page 2, Lines 3-4.) To the contrary, Plaintiff has clearly stated to the taxing authorities many times that since 1989 it has operated a place of religious worship on the site through its agent, Reverend Christopher Hunt. Furthermore, the Foundation stated this at the trial. (Testimony of Christopher Hunt, Transcript of Trial before DeKalb Superior Court on 14 March 1995, Page, 42, Lines 9-14). Assuming arguendo without admitting that the Foundation was not using the site as a place of religious worship in 1994, the Foundation contends that, on the basis of a clear reading of O.C.G.A. 48-5-41(a)(2), it would still be entitled to an exemption from ad valorem taxation for its property in tax year 1994, the tax year subject to the request for the exemption from ad valorem taxation in this appeal as a place of religious worship. Under O.C.G.A. 48-5-41(a)(2) it does not matter whether the taxpayer is the user and the

owner, or just the owner of the property, in order for the property to be entitled to an exemption from ad valorem taxation as a place of religious worship, as long as the property is used as a place of religious worship. O.C.G.A. 48-5-41(a)(2) provides for an exemption from ad valorem taxation for *all* places of religious worship (emphasis added). Yet, the DeKalb County taxing authorities and the DeKalb County Superior Court, affirmed by the Georgia Court of Appeals, denied that the Foundation's property was entitled to an exemption as a place of religious worship for tax year 1994 because they perceived the Foundation to be the owner but not the user of the place of religious worship, and they claimed that in order for an exemption under O,C.G.A. 48-5-41(a)(2) to be granted, the taxpayer had to be the owner as well as the user of the property, not just the owner.

There is no case law in Georgia that states that the owner must be the user of the property as a place of religious worship in order for the property to be exempt from ad valorem taxation. Clearly the statute does not state that the owner must be the user, nor does Georgia case law state it. There is no suggestion in either the code or case law that there is an exception to the rule that all places of religious worship are exempt from ad valorem taxes if the owner of the property is not the user. In its Order, the DeKalb County Superior Court cited only one case for the proposition it asserts that the owner must be the user of property in order for the property to be entitled to an exemption from ad valorem taxation as a place of religious worship. That case, Church of God of the Union Assembly, Inc.. v. City of Dalton, has been misread by DeKalb County. Dalton says that the only properties *belonging to* (emphasis added) religious institutions that are exempt from ad valorem taxation are places of religious worship, but DeKalb County cites the case as if it said that property must belong to a religious institution to be exempt. What the case really says is that among all of the property that might be owned by a church (churches own apartments, parking

lots, stores, places of religious worship, etc.), only places of religious worship are exempt. As far as the Foundation is concerned, this is clear and by interpreting the case differently, contrary to the Foundation's interest, the State is violating the Foundation's right to equal protection of the laws.

. There is case law in other states that provides explicitly what the Georgia statute says: that all property that is used as a place of religious worship should be exempt from ad valorem taxation, regardless who the owner is. In Scott v. Society of Russian Israelite, .a private individual leased his lot to a religious society that erected a building on the premises solely for religious purposes. The court found the property to be exempt without regard to ownership and said, "To hold that a religious society must be the absolute owner of property used exclusively for church purposes, to create the exemption, would be to inject words into the constitution and statute which are not therein written. This we do not have the power to do."

In Washburn College v. Comm'rs of Shawnee, a case dealing with exemption for literary and charitable institutions, the court said, "The fact that they (the framers) ignored 'ownership' and made 'use' the test of exemption, shows clearly that they recognized the essential distinction between the two, and established the latter, rather than the former, as the basis of exemption."

"There is a recognized conflict of authority as to whether property leased and used for tax exempt purposes is entitled to exemption.... Of course, there is an even stronger case for exemption if the rental is not substantial or returns no profit or if the lessor permits the use of his property without payment of any rent...to allow the exemption in these circumstances carries out the purpose of the provision and encourages the purposes of the exempt body, in that exemption for the leased property enables such user to rent property at a lower rental than the owner would be willing to accept from a private person." 55 ALR 3d 430 (1995).

"Under constitutional or statutory provisions predicating exemption solely on religious use of property, it is not essential to exemption that the property be owned by a religious institution....where exemption is predicated primarily on religious use, property used by a church is exempt despite the fact that it is owned by a different church." 84 CJS Taxation Sec. 291(b) (1994)

It is a violation of the Foundation's right to equal protection of the laws for the taxing authorities in DeKalb County, the DeKalb County Superior Court, and the State of Georgia Court of Appeals, by affirmation, to add a condition to the statute in enforcing it in the Foundation's case, which condition is not included in a clear reading of the statute or the case law. There is no suggestion in either the code or case law that there is an exception to the rule that all places of religious worship are exempt from ad valorem taxes if the owner of the property is not the user.

All places of burial, also listed in O.C.G.A. Sec. 48-5-41(a)(2) in the same sentence, are exempt regardless who owns them (it is well known that places of burial are frequently owned by corporations and groups of people who are not necessarily the users -- yet they are granted the exemption.) The attorney general of the State of Georgia has stated with regard to this situation, "Property utilized as a cemetery or place of burial is exempt from taxation without regard for the fact that property is owned by either a public or private corporation or by individuals, collectively or severally." OP.Att'y.Gen. No. U75-15, p. 319 (1975).

In contrast, when the Georgia statute intends to make a distinction between the owner and the user of property, it does so explicitly. For example, in O.C.G.A. 48-5-41(a)(3) the statute specifically exempts "All property owned by religious groups and used only for single-family residences when no income is derived from the property." Meanwhile, O.C.G.A. Sec. 48-5-41(a)(2) very clearly exempts *all* (emphasis added) places of religious worship from ad valorem taxation. Yet, the DeKalb County taxing authorities and the DeKalb County Superior Court, as affirmed by the Georgia Court of Appeals, are enforcing the statute against the Foundation, as if the owner of the property has to be the user of a place of religious worship. That is a violation of the Foundation's right to equal protection of the laws. The Foundation feels O,C.G.A. 48-5-41(a)(2) should be enforced as it reads, and it is clearly to be read in the favor of granting an exemption for the Foundation's property as a place of religious worship. The statute should be enforced against the Foundation as it reads: exempting *all* places of religious worship (emphasis added). The Foundation feels that the statute is clear, but if DeKalb County reads the statute differently, if the statute is ambiguous, Mystyle Hosiery Shops, Inc. v. Harrison advises Georgians how to proceed. Mystyle provides that if a taxation statute evokes just doubt, the doubt should absolve the taxpayer from his burden. Therefore, whether O.C.G.A.48-5-41(a)(2) is interpreted as clearly in the Foundation's favor, or if there are doubts about its interpretation, the Foundation should be granted its exemption. Not to grant the Foundation's property an exemption as a place of religious worship is a violation of the Foundation's right to equal protection of the laws.

. The DeKalb County Superior Court, in its opinion, also cites O.C.G.A. 48-5-41(d) as authority for the denial of an exemption for the Foundation's property. O.C..G.A. 48-5-41(d) provides in pertinent part that an exemption is not to be granted "to real estate or buildings which are rented, leased, or otherwise used for the *primary purpose* (emphasis added) of

securing an income thereon....." DeKalb County has censured the Foundation as not being entitled to the exemption because it perceives the Foundation to be earning an income from the property. The plain language of the statute says that if the *primary purpose* (emphasis added) of the taxpayer is to earn an income from the property, the property is not to be exempt from ad valorem taxation. The primary purpose for the Foundation's property is clearly not to earn an income. The Foundation has clearly made no money from the property, but has allowed churches to use the property for merely making a contribution toward the cost of utilities, maintenance, and building operations. If the Foundation's *primary purpose* were to earn money from the property, the Foundation would lease the property commercially, at the going rate, in order to cover all expenses, including the mortgage and the taxes, and to make a profit. Clearly, DeKalb County is not applying O.C.G.A. 48-5-41(d) in accordance with a clear reading of the statute, and that is an additional violation of the Foundation's right to equal protection of the laws.

Finally, the Foundation contends that it has been denied equal protection of the laws because another entity, Emory University, was granted an exemption for a place of religious worship for a church which operates a place of religious worship on the Emory campus.

B. THE DENIAL OF THE FOUNDATION'S APPLICATION FOR EXEMPTION FROM AD VALOREM TAXATION AS A PLACE OF RELIGIOUS WORSHIP VIOLATED THE FOUNDATION'S RIGHT TO DUE PROCESS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION

The denial of an exemption for the Foundation's property as a place of religious worship for tax year 1994, which exemption the Foundation's property is entitled to under a clear reading of the statute and case law, violates the Foundation's due process rights under the 14th Amendment, because the denial places an unnecessary, destructive financial burden on the Foundation. The Foundation is a not-for-profit entity that had to file for bankruptcy in 1997 because it had to pay its ad valorem taxes. With no source of income, the Foundation can ill afford to pay ad valorem taxes. The Foundation borrowed the major portion of the funds to pay the ad valorem taxes (including the back log) from its mortgagee. When the mortgagee prepared to foreclose last year, the Foundation had no choice but to file for bankruptcy. DeKalb County, is unnecessarily taxing a charitable entity and has stifled the liberty of this charitable entity to proceed with its religious activities at the site. The churches that used to pay Reverend Hunt a contribution toward the cost of maintenance, utilities and building operations at the site in exchange for the privilege of operating a place of religious worship there, have had to find other locations in which to hold their religious worship because they do not feel secure being on the site in light of the bankruptcy and the threat of foreclosure. For the same reasons, Reverend Hunt can no longer operate his religious entities at the site. Congregants who used to pray at the site have been deprived of their right to pray at the site. The congregants have had either to find another place to pray or to stay at home to pray. The Foundation has clearly been deprived of its Constitutional right and liberty to continue to practice its charitable/religious works at the site, without due process of the law. The Foundation can not afford to allow the site to be used as a place of religious worship any longer.

II. The denial by the DeKalb County Superior Court of an exemption from ad valorem taxation for the Foundation's property, as an institution of purely public charity in tax years 1992-1994, is a denial of the Foundation's Constitutional rights under the 14th Amendment. The State of Georgia Court of Appeals erred in affirming the Superior Court of DeKalb County.

The Foundation applied to the DeKalb County taxing authorities for exemptions from ad valorem taxation as an institution of purely public charity for tax years 1992, 1993, and 1994, in accordance with O.C.G.A. 48-5-41(a)(4), which provides that all institutions of purely public charity are exempt from ad valorem taxation, because the Foundation had been fulfilling its corporate/charitable purpose in allowing churches to use the site for a nominal contribution toward the costs of maintenance, utilities and building operations at the site. The DeKalb County Board of Tax Assessors denied the Foundation's applications and the DeKalb County Board of Equalization affirmed those denials. In the de novo appeal, the DeKalb County Superior Court denied the Foundation's entitlement to an exemption from ad valorem taxation as an institution of purely public charity in tax years 1992-1994. The State of Georgia Court of Appeals affirmed the DeKalb County Superior Court.

In its Order that was entered on 2 April 1996 the DeKalb County Superior Court, after reviewing the elements of a purely public charity as set forth in Georgia case law, stated that the Foundation did not have the sole purpose and activity of dispensing public charity, and that the Foundation did not carry on an operation on its real estate for the benefit of the public but "merely made its real estate available (for a substantial monetary

charge) to other institutions for their use." The DeKalb County Superior Court reached this conclusion without conducting a hearing to make those precise determinations, and despite the Foundation's having as one of its charitable/corporate purposes helping religious groups.(Transcript, Trial in Superior Court on 14 March 1995, Page 86, Lines 9-14)

The Foundation acknowledges that with regard to institutions of purely public charity, for purposes of applications for exemption from ad valorem taxation in the State of Georgia, unlike the situation regarding an application for exemption from ad valorem taxation as a place of religious worship, the case law clearly states that the owner of the property must be the user of the property as an institution of purely public charity in order for the property to be entitled to an exemption.

A.THE DENIAL OF THE FOUNDATION'S APPLICATION FOR EXEMPTION FROM AD VALOREM TAXATION AS AN INSTITUTION OF PURELY PUBLIC CHARITY FOR TAX YEARS 1992-4 VIOLATED THE FOUNDATION'S RIGHT TO EQUAL PROTECTION OF THE LAWS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION.

In its Order that was entered on 2 April 1996, the DeKalb County Superior Court stated that the Foundation did not have the sole purpose and activity of dispensing public charity, and that the Foundation did not carry on an operation on its real estate for the benefit of the public but "merely made its real estate available (for a substantial monetary charge) to other institutions for their use." Also in its Order the DeKalb County Superior Court cites O.C.G.A. 48-5-41(d) as authority for the denial of an exemption for the Foundation's property. O.C..G.A. 48-5-41(d) provides in pertinent part that an exemption is not to be granted "to real estate or buildings which are rented, leased,

or otherwise used for the *primary purpose* (emphasis added) of securing an income thereon....." DeKalb County has censured the Foundation as not being entitled to the exemption because it perceives the Foundation to be earning an income from the property. The plain language of the statute says that if the *primary purpose* (emphasis added) of the taxpayer is to earn an income from the property, the property is not to be exempt from ad valorem taxation. The Foundation has clearly made no money from the property, but has allowed churches to use the property for merely a contribution toward the cost of maintenance, of utilities and the building operations at the site. If the Foundation's *primary purpose* were to earn money from the property, the Foundation would lease the property commercially, at the going rate, in order to cover all expenses, including the mortgage and the taxes, and to make a profit. Clearly, DeKalb County is not applying O.C.G.A. 48-5-41(d) in accordance with a clear reading of the statute, and that is a violation of the Foundation's right to equal protection of the laws.

B.THE DENIAL OF THE FOUNDATION'S APPLICATION FOR EXEMPTION FROM AD VALOREM TAXATION AS AN INSTITUTION OF PURELY PUBLIC CHARITY VIOLATED THE FOUNDATION'S RIGHT TO DUE PROCESS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION.

.The Order that the DeKalb County Superior Court entered on 2 April 1996 stated the conclusion that the court reached, without conducting a hearing on the issue, that the Foundation did not have the sole purpose and activity of dispensing public charity, and that the Foundation did not carry

on an operation on its real estate for the benefit of the public but "merely made its real estate available (for a substantial monetary charge) to other institutions for their use.," The DeKalb County Superior Court never conducted a hearing to make those precise
determinations. One of the Foundation's corporate/charitable purposes is helping religious groups. (Transcript of trial, Page 86, Lines 9-14) The Georgia Court of Appeals affirmed the Superior Court of DeKalb County, without issuing a reported opinion. It was a violation of the Foundation's Due Process rights for the court to make such a determination, so contrary to the facts. Furthermore, it was a violation of the Foundation's right to due process of the law for the Court to determine, without a fact finding hearing, whether or not the Foundation was an institution of purely public charity in the State of Georgia. The State of Georgia Court of Appeals erred in affirming the Order entered by the DeKalb County Superior Court on 2 April 1996.

The denial of an exemption for the Foundation's property as an institution of purely public charity for tax years 1992-`1994, which exemption the Foundation contends its property deserves under a clear reading of the law and an acknowledgment of the true facts, violates the Foundation's due process rights under the 14th Amendment of the U.S. Constitution, because the denial places an unnecessary, destructive financial burden on the Foundation. The Foundation is a not-for-profit entity that had to file for bankruptcy in 1997 because it had to pay its ad valorem taxes. With no source of income, the Foundation can ill afford to pay ad valorem taxes. The Foundation borrowed the major portion of the funds to pay the ad valorem taxes (including the back log) from its mortgagee. When the mortgagee prepared to foreclose, the Foundation had no choice but to file for bankruptcy. DeKalb County, is unnecessarily taxing a charitable entity and has stifled the liberty of this charitable entity to proceed with its charitable/religious activities at the site. The church that used to pay Reverend Hunt a contribution toward the

cost of maintenance, utilities and building operations at the site in exchange for the privilege of operating a place of religious worship there, has found another location in which to hold its religious worship because it did not feel secure being on the site in light of the bankruptcy and the threat of foreclosure. For the same reasons, Reverend Hunt could no longer operate his entities at the site. Congregants who used to pray at the site have been deprived of their right to pray at the site. The congregants have had either to find another place to pray or to stay at home to pray. The Foundation has clearly been deprived of its Constitutional right and liberty to continue to practice its charitable/religious works at the site, without due process of the law. The Foundation can not afford to allow the site to be used as a place of religious worship any longer.

III. The Court of Appeals of Georgia violated the Foundation's 14th Amendment rights to Equal Protection under the laws and Due Process of the law by rendering an unreported, summary disposition which was not to have any precedential value.

The Georgia Court of Appeals affirmed the denial by the Superior Court of DeKalb County of the requests for exemptions from ad valorem taxation for the Foundation's property. The Court of Appeals's affirmation of the denial of exemptions was in the form of an unreported, summary disposition under Rules 34 and 36 of the Rules of the Georgia Court of Appeals. The Georgia Court of Appeals did not issue any opinion, and it did not even comment on the Constitutional issues and the unanswered legal issues that the Foundation raised in its Amended Brief. The Foundation contends that the Georgia Court of Appeals, in failing to issue an opinion, and in failing to report it, has thus violated the Foundation's right to equal protection of the laws and the Foundation's right to due process of the law.

Rule 36 of the Rules of the Court of Appeals of the State of Georgia provides that the Court of Appeals may affirm the ruling below without an opinion when the evidence in the case supports the judgment, when no reversible error of law appears and an opinion would have no precedential value, when the judgment of the court below adequately explains the decision, and/or when the issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief. The Rule further provides that Rule 36 cases have no precedential value.

The Foundation is not at all clear on the Court of Appeals's reasoning behind its unreported, summary disposition of the ruling that the DeKalb Superior Court entered on 2 April 1996. The Foundation contends that the evidence in this case does not support the judgment, that there is obviously a reversible error of law in the opinion below, and that an opinion in this case would arguably have crucial, precedential value since the judgment of the court below does not adequately explain the decision. The Foundation contends further that the issues are not controlled adversely for the reasons and the authority given in the appellee's brief. Contrary to cases that were contemplated to be handled under Rule 36, the Foundation's case is of great precedential value. Even if the Foundation's case were clearly a Rule 36 case, the Foundation contends that the statement in Rule 36, that Rule 36 cases have no precedential value, is very vague and consequently, unconstitutional. Either this case is not the sort contemplated by Rule 36 because it is precedential or, in the alternative, if the case is not obviously precedential, the Court of Appeals erred because the standard in Rule 36 for a case not be precedential is too vague. Therefore, the Court of Appeals has violated the Foundation's right to due process of

the law in denying the Foundation an opinion and in not reporting its decision, but rather, just rubber-stamping the court below as if its decision had no precedential value.

Rule 34 provides that opinions are to be reported unless otherwise designated by the court. The Court of Appeals decided that it would issue a summary affirmation, under Rule 36 and not report an opinion in the Foundation's case. . The Court of Appeals' decision thus adopts the unconstitutional vagueness of the lower court's decision and is consequently replete with vagueness. Whether the Court of Appeals decided to reverse the Order of the DeKalb County Superior Court, or whether the Court of Appeals decided to affirm the Opinion, it should have provided the Foundation and anyone else affected, with a well-thought-out, detailed opinion, explaining why the exemptions were denied. The Foundation has explained many times why the rationale for the denials presented by the DeKalb County Superior Court fails. The facts in the Foundation's case are clearly distinguishable from Dalton unless that case is given a different interpretation that no other court had given it. It is a violation of the Foundation's due process rights and right to equal protection of the laws for the Court of Appeals to rule against the Foundation without any explanation or precedential legal authority. The Court of Appeals clearly has *made* precedent by adopting the Dalton case as authority for the proposition that the owner has to be the user for ad valorem exemption. Therefore, by not commenting on a scenario, such as that in the instant case, where the owner is not the same entity as the user of a place of religious worship, regarding an application for exemption from ad valorem taxation, the Georgia Court of Appeals is violating its own rules in a manner which violates the Foundation's constitutional rights..

In "Nonpublication in the Eleventh Circuit: An Empirical Analysis," 16 Fla. St. U.L.Rev. 963 (1989), the authors accurately state that judicial opinions are of great significance in the practice of law because they clarify and interpret existing

rules of law and provide for the evolution of the law as a consistent, comprehensive body of legal doctrine.. The authors point out that a rule that admonishes judges to avoid publishing decisions if their opinion would have no precedential value is much too vague and the interpretation of such a measure is very subjective. Rule 36 of the State of Georgia Court of Appeals is an example of a rule that is much too vague and the interpretation of which is very subjective. Judges should be required to explain the reasoning behind their decisions.

In "Will the Federal Courts of Appeals Perish if They Publish? Or Does the Declining Use of Opinions to Explain and Justify Judicial Decisions Pose a Greater Threat?," 44 Am. U. L. Rev. 757 (1995), Martha J. Dragich emphasizes that selective publication and summary disposition obscure the law, and that published opinions which state the facts and the reasoning for the decision are essential to *stare decisis*. Through the careful preparation of opinions, according to Dragich, judges can demonstrate due consideration in each case, and through publication of the opinion the courts can secure the essential values of stability, certainty predictability, consistency, and fidelity to authority, all so crucial to our judicial system. There is no opportunity. for the Foundation, or any other entity that might be affected, to secure the essential values of stability, certainty, predictability, consistency, and fidelity to authority, in this case. Therefore the Court of Appeals of the State of Georgia should be ordered to set aside its summary disposition, and issue a clear explanation of its decision.

The Foundation needs to know what the law is and what the rationale for the law is with regard to its situation on property, where churches are holding a place of religious worship, and where the Foundation is not one of the churches, but is a charitable entity for whom helping churches is one of its corporate/charitable purposes and it is letting the churches use the property for the cost of the maintenance, the utilities, and the building operations at the site. The Dalton case, the only

authority cited by Defendants and the court below, was clearly misread because it did not state, in any way, that the owner had to be the user.

The Foundation is entitled to a well thought out opinion, especially in this situation where the case law cited by the court is not in point. Neither the Georgia Court of Appeals nor any other Georgia court has cited one case that holds that the owner must be the user of property in order for the property to be exempt from ad valorem taxation as a place of religious worship in the State of Georgia. That opinion should be reported so that all entities, including the Foundation, know what the law is and why. To deny the Foundation a reported opinion, deprives the Foundation of Due Process of the law, and it deprives the Foundation, and all other Georgia entities, of their right to Equal Protection of the laws. Rule 36, by decreeing that decisions made under it are not precedential, is clearly open for abuse of the doctrine of *stare decisis* and of a litigant's constitutional rights, as was done in the Foundation's case.

In the instant case, although the Georgia Court of Appeals did not write a clarifying opinion, it clearly had to have decided that the law in Georgia is that the owner must be the user in order for an ad valorem exemption to be granted to a place of religious worship. That decision also clearly goes against the precedent in Georgia that the owner need not be the user of a place of religious worship. However, the Georgia Court of Appeals does not have to worry about having set such a precedent with this case because it is applying Rule 36 in a Star Chamber type of proceeding. Obviously, the use of the nonprecential part of Rule 36 must be struck down since its practical effect is to establish an optional Star Chamber type of appellant judicial system in Georgia that can be used (and was used in the instant case) to deprive litigants of their

Constitutional Due Process rights and their right to Equal Protection of the laws.

CONCLUSION

This Petition for Certiorari should be granted by this Court for all of the reasons stated above.

Respectfully submitted,

Paula Fitzgerald Wolff
11489 Lake Potomac Drive
Potomac, Maryland 20854
301-299-2920
Counsel for Petitioner

APPENDIX A

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE NO. 95-11487-4

CONSTRUCTIVIST FOUNDATION,. INC.
Plaintiff,

vs.

DEKALB COUNTY BOARD OF TAX ASSESSORS, HONORABLE TOM SCOTT, and DEKALB COUNTY BOARD OF COMMISSIONERS,
Defendants.

ORDER

The above and foregoing matter having come before this court for a regularly scheduled trial on March 14, 1996, and after hearing evidence and argument of counsel and reviewing the record and trial
memorandum filed, the Court finds as follows:

FINDINGS OF FACT

This case is before this Court pursuant to notices of appeal filed by the Plaintiff from decisions rendered by the DeKalb County Boards of Equalization regarding the taxability of Plaintiff's property for the 1992, 1993, and 1994 tax years The

Plaintiff applied for tax exemption with the Defendant DeKalb County Board of Tax Assessors for the 1992 and 1993 tax years as an institution of purely public charity, and for the 1994 tax year as an institution of purely public charity and alternatively, as a place of religious worship. The Defendant DeKalb County Board of Tax Assessors denied the Plaintiff's applications for tax exemption, and the DeKalb County Boards of Equalization upheld the denials. The Plaintiff appeals from these decisions to this Court pursuant to O,C.G.A. Sec. 48-5-311(g).

The Plaintiff is not a church, and admits that it does not conduct worship services on its property, but instead rents its property to churches for religious worship by various congregations of the lessee churches. During 1992 and 1993, the Plaintiff had in effect a written agreement with Faith Cornerstone Church, Inc. ("Faith") executed by Christopher Hunt as Vice-president of Plaintiff 1. The agreement provided for Faith's use of part of the facility at certain specified times for payment of approximately $5,000 per month. The agreement provided for the imposition of late fees by Plaintiff if Faith did not timely pay in accordance with the terms of the agreement, and also required Faith to pay legal fees if such were incurred by Plaintiff in the collection of the moneys due to Plaintiff under the agreement. During 1992, the Plaintiff received approximately $60,000 in rental payments from Faith for the use of part of Plaintiff's

property at the agreed upon times. Plaintiff states that 95% of its funds for support of the property were derived from Faith's payments. Plaintiff admits that Faith is the primary tenant and user of the facility. Although the terms of the agreement provided that the rental payments were to be used for renovation of the Plaintiff's facility and the renovations were to be completed during 1992, the Plaintiff did not complete the renovations as agreed upon.

During 1993, Faith paid approximately $60,000 in rental payments to Christopher Hunt's church, known at various times during the years in question as Ashdun Hall Christian Fellowship, First Love Christian Church, and First Love Foursquare Church. Christopher Hunt received approximately $14,000 per year during 1992 and 1993 in living expenses from the rental income derived from Faith's use of part of the property. No evidence was presented to this Court of Plaintiff's own use of the property to dispense charity to members of the public.

1.Christopher Hunt is the son of the President of Plaintiff

During 1994, Faith paid approximately $62,000 for the use of part of Plaintiff's facility at certain specified times pursuant to another written between Faith and Christopher Hunt's church, First Love Christian Church. The written agreement provided for a 5% late payment fee for each day Faith was late with its payment, up to maximum of 40% if Faith was eight days late with its weekly payment. The agreement also stated Faith would be liable for attorney fees in the amount of 15% if collection efforts were necessary to obtain payment from Faith. Repairs to the facility were still not completed by Plaintiff as set forth in the 1992 agreement. No evidence was presented to this Court of Plaintiff itself carrying on any operation on its property for the benefit of the public. Plaintiff admits that it, as the owner of the property, does not engage in religious worship.

CONCLUSIONS OF LAW

Long established Georgia law has held that taxation is the rule; exemptions are the exception, are not favored, and are strictly construed in favor of the taxing authorities and against the taxpayer. Annandale at Swanee, Inc. v. Gwinnette County Board of Tax Assessors, 242 Ga. 241, 248 S.E.2d 640 (1978); Gold Kist, Inc. v. Jones, 231 Ga. 231 Ga. 881, 204 S.E.2d 584 (1974); Brandywine Townhouses, Inc. v. Joint City County

Board of Tax Assessors, 231 Ga. 585, 203 S.E., 2d 222 (1974); Fulton Bag and Cotton Mills v. Williams, 212 Ga. 783, 95 S.E.2d 848 (1956); Fulton County Savings & Loan Assoc. v. Simmons, 210 Ga. 621, 82 S.E.2d 16 (1954); Cherokee Brick and Tile Co. v. Redwine, 209 Ga. 691, 75 S.E.2d 550 (1953); Standard Oil Co. of Kentucky v. State Revenue Commissioner, 179 Ga. 371, 176 S.E.[sic]. (1934); Gainesville v. Brenau College, 150 Ga. 156, 108 S.E. 164 (1919); Brenau Association v. Harbison, 120 Ga. 929, 48 S.E. 363 (1904); Mundy v. Van Hoose, 104 Ga. 292, 30 S.E. 783 (1898); Trustees of the Academy of Richmond Co. v. Bohler, 80 Ga. 159, 7 S.E. 633 (1887).

O.C.G.A. Sec. 48-5-41(a) (4) provides an exemption from all ad valorem property taxes for all institutions of purely public charity. To determine whether property qualifies as an institution of "purely public charity" under O.C.G.A. Sec. 48-5-41(a) (4) three factors must be carefully considered and must coexist. These factors are as follows: 1)the owner must be an institution devoted entirely to charitable pursuits; 2) the charitable pursuits of the owner must be for the benefit of the public; and 3) the use of the property must be exclusively devoted to those charitable pursuits. York Rite Bodies of Freemasonry of Savannah, et al. v. Board of Equalization of Chatham County, et al., 261 Ga. 558, 408 S.E.2d 699 (1991). An

institution must have the sole purpose and activity of dispensing public charity in order to be exempt from taxation. Camp v. Fulton County Medical Society, 219 Ga. 602, 135 S.E.2d 277 (1964).

> ...the charitable institution **itself** must be carrying on an operation n its real estate for the benefit of the public....**Merely making real estate available to other public or charitable institutions for their use is not sufficient to qualify the property of a charitable institution for the tax exemption.**

Johnson, et al. v. Wormsloe Foundation, Inc., 228 Ga. 722, 187 S.E. 2d 682 (1972)(emphasis supplied). The use of the property must be exclusively devoted to conduct that benefits the public. York Rite, 261 Ga. at 559, 408 S.E.2d at 700.

This Court finds that the Plaintiff herein, Constructivist Foundation, Inc., did not have the sole purpose and activity of dispensing public charity. Plaintiff itself did not carry on an operation on its real estate for the benefit of the public; Plaintiff merely made its real estate available (for a substantial monetary charge) to other institutions for their use.

Furthermore, O.C.G.A. Sec. 48-5-41(d) provides that the exemption statute

> ...shall not apply to real estate or buildings which are rented, leased, or otherwise

> used for the primary purpose of securing an income thereon....

This Court finds that Plaintiff's real property is rented, or leased and produces income for Plaintiff.

Accordingly, this Court finds that Plaintiff is not exempt from ad valorem taxation as an institution of purely public charity.

In the alternative, Plaintiff contends that its property should be exempt from ad valorem taxes as a place of religious worship for tax year 1994. O.C.G.A. Sec. 48-5-41(a)(2) provides an exemption from ad valorem taxes for places of religious worship.

> The property **belonging** to a religious institution which is exempt from taxation is described...as follows: 'Places of religious worship....' The foregoing enumerates, defines, and clearly identifies the property, and the only property **belonging** to a religious institution that is exempt from taxation....

Church of God of the Union Assembly, Inc. v. City of Dalton, 216 Ga. 659, 119 S.E.2d 11 (1961)(emphasis supplied). This Court finds that Plaintiff is not a religious institution engaged in religious worship, and the lessee churches do not own the property in question.

Therefore, this Court finds that Plaintiff's property is not exempt from ad valorem taxation as a place of religious worship.

Accordingly, under the law in Georgia, Plaintiff's property is not exempt from ad valorem taxation for tax years 1992, 1993 and 1994.

IT IS SO ORDERED, this 1st day of April, 1996.

Gail C. Flake, Judge
Superior Court of DeKalb County

Presented by:
Lisa F. Stuckey
Assistant County Attorney
Georgia Bar Number 271008
DEKALB COUNTY LAW DEPARTMENT
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APPENDIX B

THIRD DIVISION
ANDREWS, C.J.
POPE, P.J., S MITH, J.

NOTICE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION to be deemed timely filed. (Court of Appeals Rules 4 and 37, January 1, 1995)

March 4, 1997

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A96A2534. CONSTRUCTIVIST FOUNDATION, INC. v. DEKALB P-160 COUNTY BOARD OF TAX ASSESSORS ET AL

POPE, Presiding Judge.

As the evidence supports the judgment, no reversible error of law appears and the judgment of the court below adequately explains the decision, the judgment below is AFFIRMED without opinion in accordance with Court of Appeals Rule 36.

Judgment affirmed. Andrews, C.J., and Smith, J. concur.

APPENDIX C

Court of Appeals
of the State of Georgia

ATLANTA, MARCH 20, 1997

The Honorable Court of Appeals met pursuant to adjournment.
The following order was passed:

Case No. A96A2534

CONSTRUCTIVIST FOUNDATION, INC. V. DEKALB COUNTY BOARD OF
TAX ASSESSORS ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of State of Georgia
Clerks Office, Atlanta
March 20, 1997

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court
hereto affixed the day and year last above written

"s/William C. Martin" Clerk

APPENDIX D

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: October 23, 1998

Hugh S. Hunt
11489 Lake Potomac Drive
Potomac, Maryland 20854

Case No. S97C1149

CONSTRUCTIVIST FOUNDATION, INC. V. DEKALB COUNTY BOARD OF TAX ASSESSORS et al.

COURT OF APPEALS CASE NO. A96A2534

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

Sherie M. Welch, Clerk

APPENDIX E

The Due Process Clause and the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

O.C.G.A. 48-5-41(a)(2): O.C.G.A. 48-5-41(a) The following property shall be exempt from all ad valorem taxes in this state:
(2) All places of religious worship or burial.

O.C.G.A. 48-5-41(a)(3): O.C.G.A. 48-5-41(a) The following property shall be exempt from all ad valorem taxes in this state:
(3) All property owned by religious groups and used only for single-family residences when no income is derived from the property;

O.C.G.A. 48-5-41(a)(4): O.C.G.A. 48-5-41(a) The following property shall be exempt from all ad valorem taxes in this state:
(4) All institutions of purely public charity.

O.C.G.A. 48-5-41(d). This code section, excluding paragraph (1) of subsection (a) of this Code section, shall not apply to real estate or buildings which are rented, leased, or otherwise used for the primary purpose of securing an income thereon and shall not apply to real estate or buildings which are not used for the operation of religious, educational, and charitable institutions. Donations of property to be exempted shall not be predicated upon an agreement, contract, or other instrument that the donor or donors shall receive or retain any part of the net or gross income of the property.

RULE 36 OF THE COURT OF APPEALS OF THE STATE OF GEORGIA

"AFFIRMANCE WITHOUT OPINION, WHEN RENDERED"

Cases in which:

(1) The evidence supports the judgment;

(2) No reversible error of law appears and an opinion would have no precedential value;

(3) The judgment of the court below adequately explains the decision; and/or

(4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief

may be affirmed without opinion. Rule 36 cases have no precedential value.

RULE 34 OF THE COURT OF APPEALS OF THE STATE OF GEORGIA

"REPORTING OF OPINIONS"

Opinions are reported except as otherwise designated by the Court.

The official reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors and participants in the opinions.

OP.Att'y.Gen. No. U75-15, p. 319 (1975).
"Property utilized as a cemetery or place of burial is exempt from taxation without regard for the fact that property is owned by either a public or private corporation or by individuals, collectively or severally."